



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0735; FRL-10022-52-Region 9]

Air Plan Approval; Arizona; Miami Copper Smelter Sulfur Dioxide Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Arizona State Implementation Plan (SIP). This revision concerns emissions of sulfur dioxide (SO₂) from the copper smelter in Miami, Arizona. We are approving the rescission of two Arizona Department of Environmental Quality (ADEQ) Arizona Administrative Code (A.A.C.) provisions from the Arizona SIP that are no longer needed to regulate this emission source under the Clean Air Act (CAA or the “Act”).

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0735. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On March 3, 2021 (86 FR 12310), the EPA proposed to approve the following revision into the Arizona SIP.

TABLE 1 - RULE FOR WHICH RESCISSION FROM THE SIP IS REQUESTED

Local Agency	Citation	Rule Title	Adopted	SIP Approval Date
ADEQ	A.A.C. R18-2-715(F)(2) and (H)	Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements	March 7, 2009	September 23, 2014

We proposed to approve this revision because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the revision and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment (with four duplicates) that were supportive of our action.

III. EPA Action

No comments were submitted that change our assessment of the revision as described in

our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving the rescission of A.A.C. R18-2-715, sections (F)(2) and (H) from the Arizona SIP.

IV. Incorporation by Reference

In this rule, the EPA is amending regulatory text that includes incorporation by reference. The EPA is removing A.A.C. R18-2-715(F)(2) and (H), as described in Table 1 of this preamble, from the Arizona SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 30, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart D – Arizona

2. In § 52.120, amend table 2 in paragraph (c), under the heading “Article 7 (Existing Stationary Source Performance Standards),” by removing the entry reading “R18-2-715, sections F, G, and H” and adding in its place the entry “R18-2-715, section F, excluding (F)(2), and section G” to read as follows:

§52.120 Identification of plan.

* * * * *

(c) * * *

Table 2—EPA-Approved Arizona Regulations

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
Article 7 (Existing Stationary Source Performance Standards)				

R18-2-715, section F, excluding (F)(2), and section G	Standards of Performance for Existing Primary Copper Smelters: Site-Specific Requirements	March 7, 2009	September 23, 2014, 79 FR 56655; [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT Federal Register CITATION]	EPA approved the rescission of sections (F)(2) and (H) on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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